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7 CYBERSitter, LLC d/b/a Solid Oak Software

8 UNITED STATES DISTRICT COURT  
9  
10 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

11 CYBERSitter, LLC, a California limited  
12 liability company, d/b/a Solid Oak Software,

13 Plaintiff,

14 v.

15 The People's Republic of China, a foreign  
16 state; Zhengzhou Jinhui Computer System  
Engineering Ltd., a Chinese corporation;  
17 Beijing Dazheng Human Language  
Technology Academy Ltd., a Chinese  
18 corporation; Sony Corporation, a Japanese  
corporation; Lenovo Group Limited, a  
19 Chinese corporation; ASUSTeK Computer  
Inc., a Taiwanese corporation; BenQ  
20 Corporation, a Taiwanese corporation; Haier  
Group Corporation, a Chinese corporation;  
21 DOES 1-10, inclusive,

22 Defendants.

CASE NO. CV 10-00038 JST(SHx)

PLAINTIFF'S RESPONSE TO HAIER  
GROUP CORPORATION'S AND  
ZHENGZHOU JINHUI COMPUTER  
SYSTEM ENGINEERING LTD.'S  
OPPOSITION AND OBJECTIONS TO  
PLAINTIFF'S REQUEST FOR  
JUDICIAL NOTICE

Judge: Hon. Josephine Staton Tucker  
Ctm: 10A

Hearing Date: July 18, 2011  
Hearing Time: 10:00 a.m.

**I. INTRODUCTION**

Plaintiff CYBERsitter, LLC d/b/a Solid Oak Software (“Plaintiff”) hereby respectfully responds to Haier Group Corporation’s (“Haier”) and Zhengzhou Jinhui Computer System Engineering Ltd.’s (“Jinhui”) respective opposition (Ct. Docket Inst. No. 177) and objections (Ct. Docket Inst. No. 169) to Plaintiff’s Request for Judicial Notice (Ct. Docket Inst. No. 163) as follows:

**II. PLAINTIFF’S RESPONSE TO HAIER’S OBJECTIONS**

**A.** Haier’s First Objection: *Paragraphs 1-6; Exhibit (sic) 7-11: Web pages from the USPTO website showing [Haier]’s patent and trademark registrations*

Haier does not object that the United States Patent and Trademark Office website documents are somehow inaccurate or unreliable. (Ct. Docket Inst. No. 177, p. 2:26 – 3:7). Indeed, Haier’s lack of objection as to the accuracy and reliability of the USPTO’s documents is an admission that such documents are in fact accurate and reliable.

Instead, Haier objects that the USPTO web pages showing Haier’s patent and trademark registrations are irrelevant as to whether Haier is subject to personal jurisdiction in California courts. First, the subject registrations are relevant as they tend to show that Haier is engaged in nation-wide commerce, including California. Second, even if the registrations were not relevant as to whether California courts had jurisdiction under California law, this objection completely ignores the fact that Haier’s patent and trademark registrations are relevant as to whether the Court has general jurisdiction over Haier under the nation-wide federal long-arm statute of Fed. Civ. P. R. 4(k)(2). Therefore, these documents are probative both as to whether the Court has general jurisdiction under California law and whether the Court has nation-wide jurisdiction under Fed. Civ. P. R. 4(k)(2).

**B.** Haier’s Second Objection: *Paragraph 7, Exhibit 12*

Haier does not appear to object to the relevance of the fact that there is a “Haier” design center in Los Angeles. Haier also does not directly challenge the

1 accuracy of the information on the website. Instead, Haier appears to object to  
2 Plaintiff's request that the Court take judicial notice of the facts on the web page  
3 showing a Haier design center in Los Angeles because Haier claims that: a) a web  
4 page is not reliable when it comes from a private website and b) that such design  
5 center is not a subsidiary of Haier. Haier's objection lacks credibility. First, the  
6 private web page that the objected to information comes from purports to be from a  
7 "Haier" entity. Second, the USPTO registrations establish, and Haier does not deny,  
8 that Haier owns the rights to the Haier name in the United States. Therefore, unless  
9 Haier is failing to police the use of its own name by a website incorporating the Haier  
10 name in its web address, one can infer that the information on the website is either  
11 explicitly or implicitly endorsed or adopted by Haier.<sup>1</sup> It's simply not fair or credible  
12 for Haier to object to information on the website of its own affiliate as being  
13 inaccurate.

14 **C.** Haier's Third Objection: *Paragraphs 8-9, Exhibits 13-14: Haier entities*  
15 *in New York and Delaware*

16 Haier does not dispute the accuracy of New York and Delaware records.  
17 Instead, Haier disputes whether the New York and Delaware records are relevant to as  
18 to whether the Court has jurisdiction. Whether Haier systematically establishes and  
19 maintains subsidiaries and affiliates bearing the Haier name is directly relevant as to  
20 whether the Court has jurisdiction pursuant to the nation-wide jurisdiction federal long  
21 arm statute under Fed. R. Civ. Proc. 4(k)(2).

22 **D.** Haier's Fourth Objection: *Paragraph 10, Exhibits (sic) 15: Haier's*  
23 *advertising presence and sponsorship of the NBA as shown on the NBA's*  
24 *website*

25 Haier does not dispute the accuracy of whether entity purporting to be Haier is  
26 the official sponsor of the NBA. Haier likewise does not dispute that it owns the

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28 <sup>1</sup> As such, even if not judicially noticeable, the statements on the website are admissible as an  
admission against interest and in the alternative, Plaintiff respectfully requests that they be admitted  
as such. Fed. R. Civ. P. 801(d)(2) (Admission by a party-opponent).

1 Haier name in the United States. Instead, Haier disputes whether a Haier entity's  
2 nationwide sponsorship and advertising are relevant to as to whether the Court has  
3 jurisdiction. However, whether Haier systematically markets, advertises and  
4 accumulates the goodwill for advertising bearing the Haier name is directly relevant as  
5 to whether the Court has jurisdiction pursuant to the nation-wide jurisdiction federal  
6 long-arm statute under Fed. R. Civ. P. 4(k)(2).

7 **E.** Haier's Fifth Objection: *Paragraph 11, Exhibits (sic) 16: Numbers of*  
8 *NBA teams in California*

9 Haier does not dispute the accuracy of whether entity purporting to be Haier is  
10 the official sponsor of the NBA. Haier likewise does not dispute that it owns the  
11 Haier name in the United States. Instead, Haier disputes whether a Haier entity's  
12 sponsorship and advertising in California, which can be reasonably inferred by the  
13 fact that Haier is the official NBA sponsor and there are four NBA teams in  
14 California, are relevant to as to whether the Court has jurisdiction. However, whether  
15 Haier systematically markets, advertises and accumulates the goodwill for advertising  
16 bearing the Haier name during NBA games in California is directly relevant as to  
17 whether the Court has general jurisdiction over Haier.

18 **F.** Haier's Sixth Objection: *Paragraphs 12-16, Exhibits 12, 17-20: Haier*  
19 *products are sold throughout the Central District and the United States*

- 20 i) Exhibit 12 Which States that Haier Products Are Sold in Best Buy  
21 and Walmart Comes from a "Haier" Website and is Relevant as to  
22 General Jurisdiction

23 Haier's objection that the "Haier" webpage stating that Haier products are sold  
24 in Walmart and Best Buy lacks accuracy is without merit. First, the private web page  
25 that the objected to information comes from purports to be from a "Haier" entity.  
26 Second, the USPTO registrations establish, and Haier does not deny, that Haier owns  
27 the rights to the Haier name in the United States. Therefore, unless Haier is failing to  
28 police the use of its own name by a website incorporating the Haier name in its web

1 address, one can infer that the information on the website is either explicitly or  
2 implicitly endorsed or adopted by Haier.<sup>2</sup> It's simply neither fair nor credible for  
3 Haier to object to information on the website of its own affiliate as being inaccurate.

4 ii) Exhibits 17-20 Which State that Best Buy and Walmart have  
5 Stores throughout California and the United States is Relevant as  
6 to General Jurisdiction

7 Haier does not appear to object to the information regarding the number of  
8 Walmart and Best Buy stores in California and the United States on any basis except  
9 relevance. However, as Haier owns the Haier name in the United States, and Haier  
10 products are sold in Best Buy and Walmart according to a "Haier" entity, and Best  
11 Buy and Walmart both have numerous stores in the United States and the Central  
12 District, this information is directly relevant as to the Court's basis for general  
13 jurisdiction both in California pursuant to traditional general jurisdiction analysis and  
14 under nation-wide jurisdiction pursuant to the federal long-arm statute of Fed. R.  
15 Civ. P. 4(k)(2).

16 **G.** Haier's Seventh Objection: *Paragraphs (sic) 17, Exhibit 21: [Haier]'s*  
17 *hiring of Alston & Bird LLP as its counsel to defend this case*

18 Haier's hiring of Alston & Bird is relevant to the financial burdens the  
19 defendants face in litigating in California. One of the factors to be weighed in the  
20 forum non conveniens analysis is the relative burden on the moving party to litigating  
21 the action in the present forum. Likewise, the defendants' hiring of AmLaw 100 firms  
22 is relevant to the reasonableness of the Court asserting jurisdiction. *See Bancroft &*  
23 *Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000) (listing the  
24 burden on the defendant in defending in the forum as one of the factors for the court to  
25 consider in whether asserting jurisdiction would be unreasonable). The moving  
26 defendants' hiring of AmLaw 100 firms show the substantial resources the defendants

27  
28 <sup>2</sup> Likewise, even if not judicially noticeable, the statements on the website are admissible as  
an admission against interest and in the alternative, Plaintiff respectfully requests that they be  
admitted as such. F. Civ. P. R. 801(d)(2) (Admission by a party-opponent).

1 have to defend the instant case. *See* Plaintiff's Opposition to Haier's Motion to  
2 Dismiss Based on Personal Jurisdiction at p. 16 ("The Developer Defendants and  
3 Haier are able to mount a vigorous defense in California, as evidence by their choice  
4 of lead counsel – both AmLaw 100 firms.") (Ct. Docket No. 156 ). This is directly  
5 relevant to the potential burden litigating the case in the United States presents to  
6 Haier, and tends to show that Haier would not be unduly burdened or prejudiced by  
7 defending this action in the United States.

8 **H.** Haier's Eighth Objection: *Paragraphs (sic) 18: "Plaintiff requests that*  
9 *the Court take notice of the fact that California is the center of the U.S.*  
10 *software industry. See Fed. R. Evid. 201(b)(2)."*<sup>3</sup>

11 Haier's knowledge of whether CYBERSitter was a California company is  
12 directly relevant to the *Calder* effects test for specific jurisdiction as interpreted under  
13 Ninth Circuit precedent. *See Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d  
14 1124, 1128 (9th Cir. 2010) (the effects test requires (1) intentional actions (2)  
15 expressly aimed at the forum state (3) causing harm which the defendant knows is  
16 likely to be suffered-in the forum state. ). As such, California being the center of the  
17 U.S. software industry is relevant to specific jurisdiction insofar as it tends to show  
18 that if Haier targeted CYBERSitter, a U.S. software company, it knew that it was  
19 targeting California. *Panavision Int'l, L.P. v. Toeppen*, 938 F. Supp. 616, 621-22  
20 (C.D. Cal. 1996) *aff'd*, 141 F.3d 1316 (9th Cir. 1998) ("Toeppen has harmed  
21 Panavision, the brunt of which Panavision has borne in California, which Toeppen  
22 knew would likely happen because Panavision's principal place of business and the  
23 heart of the theatrical motion picture and television camera and photographic  
24 equipment business are in California.") (affirmed by Ninth Circuit); Fed. R. Civ. P.

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26 <sup>3</sup> To the extent the Haier's argument is based on the fact that Plaintiff cited to Fed. R. Evid.  
27 201(b)(2), Plaintiff respectfully requests that the Court consider Plaintiff's request under Fed. R.  
28 Evid. 201(b)(1). In any event, the Court has the power to judicially notice any generally known fact  
regardless of how it was mentioned in the Request for Judicial Notice, or even if it was mentioned in  
the Request for Judicial Notice. *See* Fed. R. Evid. 201 (c) ("A court may take judicial notice,  
whether requested or not") and Fed. R. Evid. 201(d) ("A court shall take judicial notice if requested  
by a party and supplied with the necessary information.")\_



201(b)(1). Moreover, this fact is generally known, just as it is generally known that California is the center of the U.S. film-making industry. See *Panavision at 621-22*; see also Fed. R. Civ. P. 201(b)(1).

### III. PLAINTIFF'S RESPONSE TO JINHUI'S OBJECTIONS

#### A. Jinhui's First Objection: Objection to Paragraph 17

The defendants' hiring of AmLaw 100 firms is relevant to the financial burdens the defendants face in litigating in California. One of the factors to be weighed in the forum non conveniens analysis is the relative burden on the moving party to litigating the action in the present forum. The defendants made this an issue by arguing that litigating in California would be a financial burden. See Plaintiff's Opposition to Defendants' Motion to Dismiss Based on Forum Non Conveniens at p. 20 ("...Dazheng and Jinhui's claims of 'huge expenses' are entitled to minimal weight given that a cursory review of their litigation counsel shows that Dazheng and Jinhui have a very large and perhaps unlimited litigation budget.") (Ct. Docket No. 158); Likewise, the defendants' hiring of AmLaw 100 firms is relevant to the reasonableness of the Court asserting jurisdiction. See *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000) (listing the burden on the defendant in defending in the forum as one of the factors for the court to consider in whether asserting jurisdiction would be unreasonable). The moving defendants' hiring of AmLaw 100 firms show the substantial resources the defendants have to defend the instant case. See Plaintiff's Opposition to Haier's Motion to Dismiss Based on Personal Jurisdiction at p. 16 ("The Developer Defendants and Haier are able to mount a vigorous defense in California, as evidence by their choice of lead counsel – both AmLaw 100 firms.") (Ct. Docket No. 156 ). This is directly relevant to the potential burden litigating the case in the United States presents to the defendants, including Jinhui, and tends to show that Jinhui would not be unduly burdened or prejudiced by defending this action in the United States.

**B. Jinhui's Second Objection: Objection to Paragraph 18**

Jinhui's knowledge of whether CYBERSitter was a California company is directly relevant to the *Calder* effects test for specific jurisdiction under Ninth Circuit precedent. *See Brayton Purcell LLP* at 1128 (the effects test requires (1) intentional actions (2) expressly aimed at the forum state (3) causing harm which the defendant knows is likely to be suffered-in the forum state. ). As such, California being the center of the U.S. software industry is relevant to specific jurisdiction insofar as it tends to show that if Haier targeted CYBERSitter, a U.S. software company, it knew that it was targeting California. *See Panavision* at 621-22; Fed. R. Civ. P. 201(b)(1). Moreover, this fact is generally known, just as it is generally known that California is the center of the U.S. film-making industry. *Panavision* at 621-22; *see also* Fed. R. Civ. Proc. 201(b)(1).

Defendant Jinhui disputes the fact is generally known and gives two examples of software companies that are based outside of California (Microsoft and NetNanny) to support its assertion that California being the software industry capital of the U.S. is vague and subject to reasonable dispute. However, the fact that two companies reside outside of California does not mean it is subject to reasonable dispute. Google (Mountain View, ), Oracle (Redwood City), Adobe (San Jose), HP (Palo Alto), Yahoo (Sunnyvale), Symantec (Mountain View), and Electronic Arts (Redwood City), all have their principal place of business is in California - not to mention Apple (Cupertino), Facebook (Palo Alto/Menlo Park), and Twitter (San Francisco) which though are not primarily thought of as software companies, create software used by millions the world over. Clearly, it is "generally known within the territorial jurisdiction of the trial court" and "not subject to reasonable dispute" that California is the capital of the U.S. software industry.



1 DATED: July 12, 2011

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